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6
7 Attorneys for Defendant
8 Juan Bravo Zambrano

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF WASHINGTON**
11 **(Honorable Edward F. Shea)**

12
13 UNITED STATES OF AMERICA,) NO. 4:15-cr-06049-EFS-19
14 Plaintiff,)
15 vs.) MOTION TO SUPPRESS
16) DATE: March 6, 2018
17 JUAN BRAVO ZAMBRANO,) TIME: 10:00 A.M.
18 Defendant.)
19 Evidentiary Hearing Requested

20 **TO: Clerk, U.S. District Court, Eastern District of Washington; and**
21 **TO: Stephanie A. Van Marter, Assistant United States Attorney.**

22 **COMES NOW** JUAN BRAVO ZAMBRANO, by and through his attorney of
23 record, Richard A. Smith of *Smith Law Firm*, and moves the court for an order
24 suppressing all evidence obtained by virtue of the unlawful stop, search and seizure
25 of Mr. Bravo Zambrano on August 26, 2015.

26
27 This motion is made based upon the Memorandum of Points and Authorities
28 submitted with the motion and all evidence to be presented at the time of hearing on
29 this motion.

30 MOTION TO SUPPRESS - Page 1

31 **SMITH LAW FIRM**
314 North Second Street
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1 DATED this 6th day of February, 2018.

2 Presented by: *Smith Law Firm*

3
4 /s/ RICHARD A. SMITH

5 RICHARD A. SMITH, WSBA 15127

6 Attorney for Defendant Zambrano

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12 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
13 **MOTION TO SUPPRESS**

14 **1. Facts in Support of the Motion to Suppress.**

15 On August 26, 2015, a Mercedes Benz was observed departing the Ramada
16 Limited Hotel located at [REDACTED], Grand Forks, BC. According to
17 reports, at approximately 4:57 a.m. the Mercedes was observed departing the Ramada
18 Limited Hotel and driving westbound on Highway 3 towards Greenwood, BC. The
19 Mercedes was lost to surveillance for approximately 15 to 20 minutes but was then
20 observed returning to Grand Forks, BC where it returned to the Ramada Limited
21 Hotel. At approximately 5:38 a.m. a woman identified as Reynosa De Robinson was
22 observed exiting the driver's seat along with a person identified as Gomez Calvillo
23 from the passenger's seat and two unknown males from the rear passenger's seats.
24 According to surveillance all parties entered room number 203 of the Ramada
25 Limited Hotel.
26

27 Later that evening at approximately 8:59 p.m., Reynosa De Robinson and Mr.
28 Gomez Calvillo and two unknown males departed the Ramada Limited Hotel in the
29

Mercedes and drove westbound on Highway 3. At 11:12 p.m. a traffic stop was conducted of the Mercedes and the occupants arrested for aiding and abetting anyone to enter Canada illegally and being an illegal foreign national in Canada under the Immigration and Refugee Protection Act ("IRPA"). Pursuant to the stop and arrest the person of Juan Bravo Zambrano was identified and placed in custody.

This motion is made to suppress the identification of Juan Bravo Zambrano and all evidence obtained by virtue of his unlawful stop, search, seizure and arrest.

2. Legal Argument.

In this case the law enforcement reports indicate that a "traffic stop was conducted of the Mercedes and the occupants arrested for aiding and abetting anyone to enter Canada illegally and being an illegal foreign national in Canada under the Immigration and Refugee Protection Act ("IRPA")." It is unclear whether the law enforcement is alleging that a traffic violation was committed that allowed the stop or that simply a stop was conducted of the Mercedes.

The Government has the burden of proving that the stopping or arresting law enforcement observations would be sufficient to constitute a violation of the traffic laws. In this case no traffic violation is identified. The Government must prove at an evidentiary hearing that the violation actually occurred.

In *Whren v. United States*, 517 U.S. 806 (1996), the court found that an officer's motive in conducting a traffic stop is irrelevant. However, the *Whren* decision has been criticized for giving police carte blanche to conduct traffic stops based purely on racial profiling, discrimination or on a police officer's unsubstantiated hunch that a motorist is engaged in the transportation of narcotics. *Whren v. United States*, 517 U.S. 806 (1996). See *E.G. David O. Markus, Whren v. United States: A Pretext to Subvert the Fourth Amendment*, 14 Harv. Blackletter A.J.

91 (in essence, the message to officers is: pull over anyone you want because you can always find a reason for doing so after the seizure; *Kenneth Gavsie*, note, making the best of *Whren*: The Problem with Pretextual Traffic Stops and the Need for Restraint, 51 Fla. L. Rev. 385, 390-91 (1998) (noting that the extensive nature of traffic codes renders it impossible for drivers to travel three blocks without violating the law in some small way; therefore, police now have “virtually unlimited discretion” to stop drivers “anytime and for any reason”).

The courts have been mindful of the abuses that are possible in the wake of *Whren*. Although judges may no longer find a Fourth Amendment violation based on a police officer’s ultimate motive in conducting a traffic stop, the courts have indicated that judges must carefully examine the credibility of police officers who claim that a motorist actually committed a traffic violation: “The courts have given the police this extraordinary power to make pretextual stops and searches of vehicles, but it is also the responsibility of the courts to make sure the testimony of police officers is given the same critical scrutiny given to a defendant’s testimony.” *United States v. Hill*, 195 F.3d 258 (6th Cir. 1999), cert denied, 528 U.S. 1176 (2000), quoting *United States v. Akarm*, 165 F.3d 452 (6th Cir. 1999) (Guy, J., dissenting). Citing Judge Guy’s dissent, the majority in *Hill* commented further:

We share in the concern that police officers using the state of the law in this circuit has carte blanche permission to stop and search “target” or “profile” vehicles for drugs ... We agree that it is the responsibility of the courts to make sure that police officers act appropriately and not abuse the power legally afforded to them by, among other things, carefully scrutinizing a police officer’s testimony as to the purpose of the initial traffic stop.

In this case the court should scrutinize carefully the police officer’s testimony as to the basis and purpose of the initial traffic stop.

1 **3. The Law Enforcement's Stop, Detention and Seizure of Juan Bravo**
 2 **Zambrano was illegal.**

3 A passenger may challenge the stop of a vehicle on Fourth Amendment
 4 grounds. *United States v. Twilley*, 222 F.3d 1092 (9th Cir. 2000). To determine
 5 whether an officer has reasonable suspicion to stop a vehicle, the court looks “at the
 6 totality of the circumstances of each case to see whether the detaining officer has a
 7 particularized and objective basis for suspecting illegal wrongdoing”. *United States v.*
 8 *Arvizu*, 534 U.S. 266, 273 (2002). However, even if law enforcement had sufficient
 9 reasonable suspicion to stop the vehicle law enforcement had no information
 10 regarding any illegal activity regarding an unknown male subsequently identified as
 11 Juan Bravo Zambrano.
 12

13 Because law enforcement had no basis to stop, detain, seize or arrest Juan
 14 Bravo Zambrano all evidence obtained by virtue of the unlawful stop, search and
 15 seizure of Mr. Bravo Zambrano must be suppressed.
 16

17 DATED this 6th day of February, 2018.

18 Presented by: ***Smith Law Firm***

19
 20 /s/ RICHARD A. SMITH

21 RICHARD A. SMITH, WSBA 15127

22 Attorney for Defendant Zambrano

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on February 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Stephanie A. Van Marter, Assistant United States Attorney.

/s/ Lugene M. Borba

LUGENE M. BORBA